

REMARKS

The July 5, 2006, Office action identified six species and “required Applicant under U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable.” The Office action contends that the election of species is required because “each of the implants hav[e] a different surface type coating application results in different effects on how the body responds to these coatings.”


Reconsideration and withdrawal of the request is sought. The burden associated with searching each of the identified species is not materially significant as the search of each species would involve search classes and subclasses that are similar if not identical. They must surely overlap. MPEP sec. 803 even provides that “[i]f the search and examination of all the claims ... can be made without serious burden, the examiner must examine them on the merits, even though they include claims to independent or distinct inventions.”

The Office action lists six species and identifies figs. 1-6, 10, and 12 as being within these six species. The Office action is silent as to figs. 7-9, and 11. The undersigned wishes to select from these omitted figures. Specifically, the undersigned selects figures 7 and 8. Should these figures belong in one of the six identified groups, that group is hereby elected. Should figs. 7 and 8 belong in a new group, this new group is hereby elected. In either event, claims 1-35 are readable on figs. 7-8 and are selected for further prosecution in accord with the Rules.

The examiner is invited to contact the undersigned should any other matters remain.

Respectfully submitted,
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